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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,813	09/21/2000	Kevin R. Crompton	M0459/7018 DW	9117
7590	01/21/2004			
David Wolf Wolf Greenfield & Sacks PC 600 Atlantic Ave Boston, MA 92210			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,813

Applicant(s)

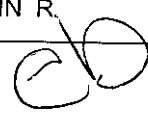
CROMPTON, KEVIN R.

Examiner

Cheryl Juska

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 28-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 45-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed September 8, 2003, has been entered. Claim 1 has been amended as requested. Claims 1-57 are pending, with claims 28-46 being withdrawn as non-elected.
2. Applicant's statement of common ownership with US 6,247,215 issued to Van Alboom et al. is sufficient to withdraw the rejections based upon this reference. Specifically, the rejections set forth in sections 4 and 6 are hereby withdrawn.
3. Additionally, applicant's traversal of the rejections based upon WO 00/71802 issued to Laird et al. is persuasive. Specifically, according to MPEP 706.02(f)(1), Laird is not available as a reference under 102(e). As such, the rejections set forth in sections 5 and 6 are hereby withdrawn.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1, 2, 7-15, 20-25, 49, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 507 028 issued to Gabay et al.

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Gabay discloses a process of embossing and transfer printing a velvet-like fabric (abstract). Said fabric may be a flocked fabric having flock fibers adhered to a substrate fabric (col. 2, lines 3-31). Hence, Gabay teaches superposed printing and embossing of a flocked fabric, but does not explicitly teach said superposition is randomly oriented or out of registry with each other.

However, Stark teaches printing a design on a patterned pile surface, wherein said design is printed out of register with the pile pattern (abstract and col. 1, lines 19-24). The Stark invention produces a novel, aesthetically pleasing product having an "enriched appearance that enhances the surface of the products formed therefrom" (col. 1, lines 50-57 and col. 2, lines 45-51). Thus, it would have been obvious to one skilled in the art to modify the Gabay process by superposing the print pattern out of registry with the embossed pattern to produce an aesthetically pleasing, visually enhanced flocked fabric.

It is asserted that an embossment process, by definition, inherently imparts the claimed "visually discernable regions," "3-D texture," and "depressions." With respect to the claimed "elongate shapes" 'oriented in a first direction,' 'essentially random positioning with respect to each other,' 'more realistic,' and 'color and shading different' limitations of the embossed pattern and the printed pattern, it is asserted that said limitations are descriptive of a specific design pattern. In the absence of a showing of criticality for the claimed design pattern, it is asserted that said limitations are obvious over the cited Gabay disclosure. Specifically, it is asserted that it would have been obvious to one of ordinary skill in the art to modify the embossed and printed patterns of Gabay as matter of design choice. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), found that matters relating to ornamentation only which have no

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mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966), found that a particular configuration was a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed configuration was significant. Therefore, claims 1, 2, 7-15, 20-25, 49, and 52 are rejected as being obvious over the cited Gabay and Stark patents.

6. Claims 3-6, 16-19, 26, 27, 47, 48, 50, 51, and 53-57 are rejected under 35 USC 103(a) as being unpatentable over the cited Gabay and Stark patents as applied above and in further view of US 5,756,180 issued to Squires et al.

Gabay and Stark do not explicitly teach a camouflage flock fabric. However, said fabrics are well known in the art. For example, Squires discloses a flocked fabric suitable as outerwear, which can be of a camouflage pattern (abstract and col. 1, lines 13-18). Thus, it would have been obvious to one of ordinary skill in the art to choose a camouflage pattern for the printing pattern taught by Gabay and Stark. Motivation to do so would be to provide an aesthetically pleasing and marketable product.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

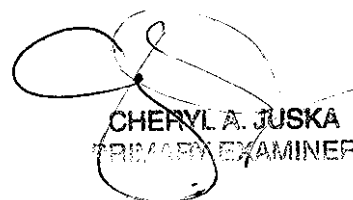
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.


CHERYL A. JUSKA
PRIMARY EXAMINER